

Appl. No. 09/587,574
Amdt. Dated May 27, 2004
Reply to Office Action of February 27, 2004

REMARKS/ARGUMENTS

Upon entry of the above amendments, claims 47-51 will be pending in the application. Newly added claims 48-51 are supported by the specification, specifically, on page 4, lines 19-24, where each of the peptides recited in claims 48-51 is described.

The new claims have been added in anticipation of the allowance of claim 47. During previous prosecution, claims of the above-captioned application were subject to a restriction requirement. The peptides recited in claims 48-51 are the non-elected species within the elected Group III, while claim 47 recites the elected species. See the Restriction Requirement mailed August 27, 2001 and Applicants Response to Restriction Requirement filed October 12, 2001. As is stated in Applicants Response to Restriction Requirement, consideration of claims directed to SEQ ID NOs: 2-5 (the non-elected species of elected Group III) should take place upon allowance of a claim directed to elected species SEQ ID NO: 1. Claim 47 is directed to the elected species of SEQ ID NO: 1, while claims 48-51 are directed to the non-elected species of SEQ ID NOs: 2-5. Accordingly, if upon entry of this amendment claim 47 is allowed, the patentability of claims 48-51 should then be considered.

Priority:

The Examiner stated that Applicants claim of priority of PCT/DE98/02621 was not proper. Accordingly, Applicants submit herewith a Substitute Declaration and Power of Attorney for Utility and Plant Patent Application in which priority of PCT/DE98/02621 under 35 U.S.C. 120 and of German Patent Application No. 19738205.3 is claimed. In addition, Applicants provide herewith a copy of a Decision on Petition to Revive Abandoned Application Under 37 C.F.R. 1.137(b) establishing continuity between the subject application and PCT/DE98/02621. Last, Applicants, by this Amendment, have amended the specification to make reference to PCT/DE98/02621 and to indicate that the present application is a continuation application thereof. Accordingly, Applicants believe that priority of PCT/DE98/02621 has been properly claimed.

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Claim Rejections under 35 USC § 102:

The Examiner rejected claim 37 as being anticipated under 35 U.S.C. § 102(b) by Behrens et al., 1998, Science vol. 280, pages 596-599, ("Behrens").

Applicants have established that the subject application is entitled to priority of PCT/DE98/02621, filed September 1, 1998 and of German Patent Application No. 19738205.3, filed September 2, 1997. Because the earliest priority date of the subject application is more than 7 months prior to the publication date of Behrens, Behrens is not prior art to the subject application. Accordingly, the rejection over Behrens should be withdrawn.

New Claims 48-51:

Based on the foregoing amendments and remarks, favorable consideration and allowance of claim 47 is respectfully requested.

Should Examiner allow claim 47, consideration of new claims 48-51 is requested. As established above, these claims are directed to the non-elected species within the elected invention and should be considered upon allowance of claim 47, which is directed to the elected species. In connection with the examination of these new claims, Applicants direct the Examiner's attention to the Office Action dated January 30, 2003. At the top of page 4 of this Office Action, the Examiner indicated that the fragments of SEQ ID NO: 1 depicted in Fig. 4 were free of the prior art. SEQ ID NOs: 2-5 correspond to these fragments. Since new claims 48-51 are directed to SEQ ID NOs: 2-5, Applicants also urge the favorable consideration and allowance of new claims 48-51.

Conclusion:

Based on the foregoing amendments and remarks, favorable consideration and allowance of claims 47-51 is respectfully requested.

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Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment, to Goodwin Procter LLP Deposit Account No. 06-0923.

Respectfully submitted for Applicants,



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